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 Security Holders of USA Capital Diversified Trust  
 Deed Fund, LLC*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 Debtor.

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

In re:  
 USA SECURITIES, LLC,  
 Debtor.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☒ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under  
 Case No. BK-S-06-10725-LBR

**DIVERSIFIED TRUST DEED  
 FUND COMMITTEE'S RESPONSE  
 TO THE UNSECURED CREDITORS'  
 COMMITTEE'S OBJECTION TO  
 DEBTORS' PROFESSIONALS' FEE  
 APPLICATIONS**

Date: September 28, 2006  
 Time: 9:30 a.m.  
 Courtroom: 1

1 The Official Committee of Equity Security Holders of USA Capital Diversified Trust  
 2 Deed Fund, LLC (the "Committee"), hereby submits its response to the Objection To  
 3 Debtors' Professionals' Fee Applications ("Objection") filed by the Official Committee of  
 4 Unsecured Creditors' of USA Commercial Mortgage (the "UCC").<sup>1</sup>

5 The debtors' professionals, Mesirow Financial Investment Management ("Mesirow"),  
 6 Ray Quinney & Nebeker PC ("RQN"), and Schwarzer McPherson ("SM," and, collectively,  
 7 with Mesirow and RQN, the "Professionals") have filed fee applications seeking approval and  
 8 allowance of approximately \$4.8 million in fees and expenses (the "Applications") against the  
 9 estates of debtor USA Commercial Mortgage Company ("USACM") and the other four  
 10 debtors. Pursuant to the Applications, the bulk of the Professionals' fees and expenses –  
 11 totaling approximately \$4.5 million – will be charged to USACM's estate. Of the \$4.8  
 12 million total, the Professionals determined that approximately \$150,000 should be charged to  
 13 the estate of USA Capital Diversified Trust Deed Fund, LLC ("Diversified Fund").

14 The UCC contends that charging the Professionals' fees primarily against the USACM  
 15 estate is unfair and, by its Objection, seeks an order that in one fell swoop would result in the  
 16 recharacterization by the Court of a fee application filed in the USACM case to, in fact, a fee  
 17 application in the Diversified Fund case. The result of this recharacterization would be a ten-  
 18 fold increase in administrative expenses over the \$150,000 currently being charged by the  
 19 Professionals against the Diversified Fund. While the text of the Objection speaks in terms of  
 20 "reallocating" fees and expenses from USACM to the other debtors, and does not expressly  
 21 state that such reallocated fees and expenses should be "allowed" against the Diversified Fund  
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23 <sup>1</sup> The Committee is aware that this response is being filed after the September 25, 2006, extended  
 24 deadline authorized by the Court. Last week, the Committee determined that it would oppose the  
 25 UCC's attempts to allocate \$1.5 million of the Professionals' fees to the Diversified Fund via its  
 26 opposition to the Applications filed in the USACM case, and was preparing to draft and file a response  
 27 by September 25. Based on representations by the UCC on September 22 that it would not pursue  
 28 reallocation at the hearing, the Committee decided that no response was necessary. Subsequently,  
 during an "all-hands" call at noon on September 26, it became evident that the UCC has renewed its  
 plans to seek reallocation on September 28. Thus, the Committee is left with no choice but to file this  
 tardy response. The UCC will not to object to this response on timeliness grounds. The Committee  
 respectfully requests that the Court excuse the timing of this filing under these circumstances.

1 estates, the import of the Objection is clear – the UCC wants the Diversified Fund to be  
2 responsible for paying \$1.5 million of the total \$4.8 million sought by the Professionals.

3 The Committee will not provide a detailed response to the UCC's proposal on a  
4 category-by-category basis and will state only that the UCC's purportedly reasonable  
5 reallocation formulas are unreasonable and arbitrary. Simply put, there is no rational basis to  
6 support the UCC's request that the Diversified Fund be saddled with nearly 1/3 of the costs of  
7 the Professionals when the Professionals themselves did not do so. More importantly,  
8 however, the Court need not address the UCC's proposal at this time because the issue of  
9 whether additional fees and expenses should be charged against the Diversified Fund, over  
10 and above the amounts currently being sought by the Professionals in their Applications,  
11 simply is not before the Court.

12 The UCC's attempt to parlay its Objection to the Applications into a vehicle for  
13 shifting additional fees and expenses to Diversified Fund's estate is procedurally improper  
14 and should not be countenanced. The UCC has not provided the Court with any legal  
15 authority to support its bold assumption that, based on an objection to fees sought against one  
16 estate, the Court may shift fees and expenses to another estate, whether in the allocation  
17 percentages that the UCC requests or otherwise. The fatal flaw in the UCC's request is that  
18 the Professionals have not sought fees and expenses in excess of \$150,000 in the Diversified  
19 Fund's case; nor have they filed a substantial contribution motion seeking to charge the  
20 Diversified Fund for services and expenses over and above the \$150,000 currently being  
21 sought. The sole issue before the Court is whether the amounts currently sought in the  
22 Applications, including the \$150,000 to be charged to Diversified Fund, should be allowed.

23 As the UCC notes in its Objection, Bankruptcy Code section 330, which authorizes  
24 the Court to award compensation for actual, necessary services and for reimbursement for  
25 actual, necessary expenses, "precludes the Court from allowing compensation for 'services  
26 that were not reasonable [sic] likely to benefit *the debtor's estate*' or were not 'necessary to  
27 the administration of *the case*.'" 11 U.S.C. § 330(a)(4)(a)." Objection, at ¶ 9 (emphasis in  
28 original). The portions of section 330(a)(4) emphasized by the UCC make clear that,

1 in reviewing the Applications, the Court must determine whether the fees and expenses  
2 benefited “the debtor’s estate” and were necessary to the administration of “the case.” In the  
3 context of the pending Applications, both “the debtor’s estate” and “the case” refers primarily  
4 to USACM, which is where the Professionals allocated the bulk of their fees. *See also* Fed.  
5 R. Bankr. P. 2016 (requiring professionals seeking compensation and reimbursement “from  
6 the estate” to file an application which describes, among other things, what payments have  
7 been made or promised to the applicant for services rendered “in the case”).

8 Under the Bankruptcy Code’s compensation approval scheme, in the absence of the  
9 filing of a new fee application or a substantial contribution motion in the Diversified Fund’s  
10 case, the Court lacks the power to make any ruling that would result in the reallocation and  
11 allowance of the Professionals’ fees from USACM to the Diversified Fund over and above the  
12 amounts sought by the currently pending Applications. Thus, the current universe of fees and  
13 expenses sought by the Professionals against the Diversified Fund is approximately \$150,000  
14 – as stated in the Applications – not \$1.5 million as the UCC urges, and the Diversified Fund  
15 has not objected to the Applications. The Committee submits that the Court’s ruling on the  
16 Applications as to the Diversified Fund must therefore be limited to a determination of  
17 whether the proposed \$150,000 should be allowed as requested by the Professionals. The  
18 issue of reallocation is not before the Court and should be left for another day.

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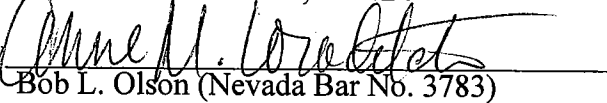
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1 Based on the foregoing, the Committee requests that the Objection be overruled to the  
2 extent that it seeks to reallocate fees and expenses to the Diversified Fund over and above the  
3 amount already being charged to the Diversified Fund by the Professionals.

4 Respectfully submitted this 27th day of September 2006.

5 BECKLEY SINGLETON, CHTD.

6 By



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